

अण्डमान तथा
Andaman And



निकोबार राजपत्र
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अण्डमान तथा निकोबार प्रशासन

ANDAMAN AND NICOBAR ADMINISTRATION

सचिवालय/SECRETARIAT

NOTIFICATION

Port Blair, dated the 13th September, 2006.

No. 179/06/F.No. 3-248/2001/Labour.—In pursuance of sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Act. No. 14 of 1947) read with Notification No. LR-1(59)/55 dated 13th December, 1955 of the Govt. of India, Ministry of Labour, the Administrator, Andaman and Nicobar Islands hereby orders for publishing the following Award given by the Labour Court, Andaman and Nicobar Islands in the matter of an Industrial Dispute between the Divisional Forest Officer, Diglipur and its workmen of Viz. S/Shri Haribar, Sonathan Mistry, Adhir Hawaldar and Subash Das Ex-DRMs of Forest Department, Diglipur over the alleged retrenchment of their services vide Administration's Notification No. 3-248/2001/Labour dated 14-6-2001.

IN THE COURT OF THE PRESIDING OFFICER

LABOUR COURT

ANDAMAN AND NICOBAR ISLANDS

Present: Shri Brindaban Mandal, Presiding Officer,
Labour Court, Port Blair

I.D. Case No. 7 of 2002.

1. Shri Haribar
2. Sonathan Mistry
3. Adhir Hawaldar
4. Subash Das

----- First Party

Versus

The Divisional Forest Officer
Diglipur

----- Second Party

Monday, the 27th day of June, 2005

AWARD

1. The present schedule reference was made to this Labour Court under sub-section (1) of section 10 read with sub-section (5) of section 12 of the Industrial Disputes Act, 1947 (Act No. 14 of 1947) read with Notification No. LR-1(59)/55 dated 13-12-1955 of the Government of India, Ministry of Labour, by the Lt. Governor (Administrator), Andaman and Nicobar Islands. At the time of making the reference, the referring authority was satisfied that an Industrial Disputes exists in between the Divisional Forest Officer, Diglipur and his workmen Viz. S/Shri Haribar, Sonatan Mistry, Adhir Hawaldar and Subash Das Ex-Daily Rated Mazdoors of Forest Department over the alleged retrenchment of their services and the present reference has been made to this Labour Court to pass an Award on the scheduled dispute, which is as follows:—

“Whether the action of the Divisional Forest Officer, Diglipur in terminating the services of S/Shri Haribar, Sonathan Mistry, Adhir Hawaldar and Subash Das Ex-Daily Rated Mazdoors is legal and justified? If not, what relief the workmen are entitled to?”

2. On receipt of the reference, notices were served upon both the parties, and both of them appeared and filed their respective statement of demands and written objection thereto. It is contended inter-alia in the written statement of demand of the first party that they were engaged on work on daily rated basis by the second party with intermittent artificial breaks during the

period from December, 1990 to November, 1991 with artificial breaks and accordingly they all have completed 240 days of work in course of 12 calendar months under the second party at Smith Island and Gandhi Nagar under Aerial Bay. The further claim of the first party is that according to the government of India's Scheme of "Temporary Status" they are entitled to be conferred with temporary status with effect from 1-9-1993, but the second party has not extended such benefit to the workmen. It is the further case of the first party that many employees junior to the first party workmen are continuing in service and their services have been regularized. It is further contended in the written statement of demand that during the conciliation proceeding before the Conciliation Officer, the authorized representative of the second party admitted that if Sundays and paid holidays are taken into consideration for counting the working days, all the members of the first party have completed 240 days of continuous service in course of 12 calendar months. It is the further case of the petitioners that services of as many as 54 daily rated workers, particulars of whom are disclosed in Annexure – D to the written statement of claim, and who are junior to the petitioners, have been regularized by the second party. The petitioners allege that the second party has adopted unfair labour practice by violating sections 25-B, 25-F, 25-G, 25-H and 25-N of the Industrial Disputes Act, 1947. By filing the claim petition the first party prays for passing an award directing the second party to reinstate the first party workmen with all consequential benefits including back wages and to absorb them against regular vacancies.

3. The second party contested this case by filing written objection. It is contended inter-alia in the written objection by the second party that the first party were offered employment whenever they offered themselves for employment based on the availability of the work with the employer. It is the specific case of the second party that the first party workmen were not retrenched from work but they were not available for offering them work under the jurisdiction of the second party. Non of the first party is entitled to temporary status as it was an one time scheme and the benefit would be extended to those employees who were in employment on 1-9-1993. The first party workmen were not in the roll of the second party on 1-9-1993. It is further contended that the first party workmen did not make themselves available for work whenever there was work under the second party. It is further contended that the seniority list has been prepared by the second party only from 10/1993 onwards for those daily rated mazdoors who were in employment. From the representations submitted by the first party workmen it indicates that they did not offer for work due to their own reasons. The first party never approached the first party in time for employment. The claim brought by the first party is a belated one. Under the Industrial Employment (Standing Orders) Act, 1946, a casual workman who absents himself without leave or information for 10 days continuously, shall be deemed to have left the service voluntarily and will accordingly be discharged from the service. The second party states that the provisions of the Industrial Disputes Act, 1947 has not been violated as alleged by the first party and therefore, the first party workmen cannot be given continuous appointment as DRM or Temporary status.
4. The only point for consideration in this case is whether the first party workmen are entitled to any relief in the present case.

Decision with reasons

5. It is not denied by the second party that all the first party workmen worked under the second party from 12/1990 to 11/1991. It is also not denied that if Sundays and paid holidays are taken into consideration for counting the number of days worked by the first party, all the first party workmen have completed 240 days of continuous work in course of 12 calendar months in terms of section 25-B of the Industrial Disputes Act, 1947. Admittedly, the first party workmen have not been given employment since after 11/1991. It is also admitted that no notice of termination had been served nor the usual wages in lieu of notice has been paid to the workmen as per provisions of section 25-F of the Industrial Disputes Act. It is also not denied that many of the workers juniors to the first party workmen have been given regular employment.
6. In view of the scheduled reference, this court is required to adjudicate whether the action of the second party in terminating the services of the first party workmen is legal and justified, and if not, what relief the workmen are entitled to. In that view of the matter, this court is not authorized to adjudicate whether the action of the second party in not giving regular appointment to the first party workmen is legal and justified.
7. One of the first party workmen viz. Sonatan Mistry, deposing as P.W.1 on oath stated in his evidence that all the members of the first party have completed work under the second party for more than 240 days at a stretch in course of 12 calendar months. It is his further assertion on oath he stated that since after his retrenchment or disengagement, their junior staff were regularized in service. He has proved Ext. 1 collectively showing that they have completed 240 days of continuous work under the second party in course of 12 calendar months and he also proved Ext. 2 showing that their juniors workers have been regularized. The second party has not cross-examined P.W.1 and as such the above assertion on the part of P.W.1 remains unchallenged. In the cases reported in AIR 1961 Calcutta 359 and AIR 1983 Calcutta 337 it has been held by the Hon'ble Calcutta High Court that non-cross examination of a witness in respect of his testimony given in examination in chief amounts to an admission. Annexures I, II, III and IV to the written objection of the second party which have been marked as Ext. 1 collectively on behalf of the first party, clearly go to establish that all the first party workmen have completed more than 240 days of work under the second party in course of 12 calendar months.

8. The specific case of the second party is that the workmen did not make themselves available for employment since after 12/1991. But the second party has failed to adduce any cogent evidence either by way or oral or documentary to prima-facie establish that the first party workmen did not make themselves available for employment and that they have deserted the job on their own volition. Disengagement of an Industrial Workmen from job also includes within the definition of 'retrenchment' under the Industrial Disputes Act. From the evidence on record, both oral and documentary, on record, I am satisfied that all the first party workmen have completed work for more than 240 days and as such the first party workmen have become entitled to a notice indicating the reasons of retrenchment or one month's pay in lieu of such notice prior to their retrenchment or disengagement. Admittedly, neither such notice has been served nor pay in lieu notice has been given to the first party workmen. From the evidence both oral and documentary on record I am further satisfied that since after the disengagement of the first party, the second party has allowed employees junior to the first party workmen to continue in service. Admittedly, no permission from the appropriate government for termination of the first party workmen has been obtained. Thus the second party has violated the provisions of sections 25-F, 25-G, 25-H and 25-N of the Industrial Disputes Act, 1947.
9. In view of facts and circumstances mentioned above I do hold that the action of the second party in terminating the services of S/Shri Haribar, Sonatan Mistry, Adhir Hawaldar and Subash Das, Ex-daily rated mazdoors is neither legal nor justified. The first party workmen are entitled to be reinstated into service with immediate effect. But considering the fact that they are daily rated employees and the claim of the first party workmen is a belated one, I think, the first party workmen should be awarded any back or other monetary benefits during the intervening period from the date of their disengagement till date, but they shall be deemed to be in service as if there had been no termination for other service purposes.

Hence,

Awarded

that the action taken by the second party in terminating the services of S/Shri Haribar, Sonatan Mistry, Adhir Hawaldar and Subash Das, Ex-daily rated mazdoors is neither legal nor justified. The first party workmen are entitled to be reinstated into service with immediate effect. But consideration the fact that they are daily employees and the claim of the first party workmen is a belated one, I think, the first party workmen should not be awarded any back wages or other monetary benefits during the intervening period from the date of their disengagement till date, but they shall be deemed to be in service as if there had been no termination for other service benefits.

Let this Award be forwarded to the Lt. Governor (Administrator), Andaman and Nicobar Islands for favour of his information and due publication in the official gazette.

Given under my hand and seal of the court this the 27th day of June, 2005.

Typed at my dictation & corrected by me.

Sd/- 27-6-05
P.O.

Sd/-
(Brindaban Mandal)
Presiding Officer,
Labour Court.
Andaman and Nicobar Islands

By order of the Lieutenant Governor,

Sd/-
(T. Venugopal)
Assistant Secretary (Labour)